

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-415
)	
Business Cell Systems)	NAL/Acct. No.200332480015
Owner of Antenna Structure #1216842 in Tellico)	
Plains, Tennessee)	FRN 0005-8658-60
Athens, Tennessee)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 23, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Business Cell Systems (“Business Cell”), owner of antenna structure #1216842, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Commission's Rules (“Rules”).¹ Specifically, we find Business Cell Systems apparently liable for failure to continuously exhibit all medium intensity obstruction lighting during daytime hours.

II. BACKGROUND

2. On November 19 and 21, 2002, the antenna structure associated with FCC antenna structure registration (“ASR”) #1216842 and located near Tellico Plains, Tennessee, was inspected by an agent of the Commission’s Atlanta Field Office (“Atlanta Office”). At the time of inspection, 9:30 a.m. on November 19, 2002, and 2:30 p.m. on November 21, 2002, the unpainted structure had no white obstruction lighting in operation.

3. On November 21, 2002, an agent of the Atlanta Office determined from the Commission ASR database that antenna structure #1216842 was registered to Business Cell and that the registration included requirements to maintain medium intensity obstruction lighting during daytime and nighttime hours. The FCC agent telephoned the nearest Flight Service Station of the Federal Aviation Administration (“FAA”), which verified that it had received no report of a light outage for this antenna structure.

4. On December 4, 2002, the agent of the Atlanta Office contacted Business Cell via telephone. Business Cell is the current owner of the antenna structure. Business Cell’s representative indicated that

¹ 47 C.F.R. § 17.51(b).

they were unaware of the outage. Upon notification by the FCC, the structure was inspected by Business Cell to confirm the lighting outage. The outage was caused by a burnt relay in the lighting control circuitry, which also prevented an alarm from being sent to notify the alarm center of the outage.

III. DISCUSSION

5. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited continuously unless otherwise specified. Business Cell's antenna structure #1216842 is required to exhibit medium intensity obstruction lighting during daylight hours and at night. At the times of inspection on November 19 and 21, 2002, no medium intensity obstruction lighting was observed operating on Business Cell's antenna structure #1216842. Business Cell had not notified the FAA of the light outage.²

6. Based on the evidence before us, we find Business Cell willfully³ and repeatedly⁴ violated Section 17.51(b) of the Rules by failing to continuously exhibit medium intensity obstruction lighting during daylight hours.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to comply with prescribed antenna structure lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a forfeiture of \$10,000.

IV. ORDERING CLAUSES

² The owner of any registered antenna structure must report immediately to the nearest flight service station of the FAA any observed or otherwise known extinguishment or improper functioning of any flashing obstruction light not corrected within 30 minutes. *See* 47 C.F.R. § 17.48(a).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Business Cell Systems is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Rules by failing to continuously exhibit medium intensity obstruction lighting during daylight hours.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Business Cell Systems SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Business Cell Systems, P. O. Box 1374, Athens, TN 37371.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau